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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff

v.

SHANNON BLAYLOCK and
TAWAKONI SEATON

Defendants

No.07-0454 PJH

**UNITED STATES' OPPOSITION TO
DEFENDANT'S MOTION FOR
PRODUCTION OF GRAND JURY
TRANSCRIPT**

Pre-Trial Conference: August 27,
2008
Time: 1:30 p.m.

Trial Date: September 15, 2008
Time: 8:30 a.m.

1 Defendant's Motion for Production Of The Grand Jury transcript of the victim-
 2 witness is not supported by law, is rapidly becoming moot, and should be denied. His
 3 unfounded and conclusory speculation that certain information was not presented to the
 4 Grand Jury and cited need to prepare for cross-examination and trial generally does not
 5 warrant this Court ordering disclosure of transcripts that are not subject to discovery under
 6 the Jencks Act and the Federal Rules of Criminal Procedure.

7 **A. The Government Has Agreed to Produce The Requested Grand Jury**
 8 **Transcript**

9 This Court will be hearing the Defendant's Motion to Produce Grand Jury
 10 Transcripts on August 27, 2008 at the scheduled Pretrial Conference. As stated in its
 11 Pretrial Conference Statement (*ECF Docket No. 89*), although not required by statute or
 12 the rules of discovery, to facilitate an efficient and orderly trial, the United States will
 13 provide the Grand Jury testimony of the witnesses it intends to call at trial - which includes
 14 that of the minor victim, on September 2, 2008 - 5 days after the pretrial conference and 13
 15 days prior to trial. *See ECF Docket No. 89*, p. 2. Therefore, as a practical matter,
 16 defendant's Motion will be rendered moot. Production of the requested transcript 13 days
 17 prior to trial will afford defendant ample opportunity to review the transcripts and prepare
 18 for cross-examination and potential impeachment of the witness.

19 **B. The Defendant Is Not Entitled To The Disclosure He Seeks**

20 Briefly addressing the merits of the defendant's Motion, the defendant is not
 21 entitled to the early disclosure of grand jury material under the law and has not made even
 22 a threshold showing of particularized need that would warrant this Court ordering early
 23 disclosure.

24 **1. Defendant's Motion Is Not Supported By Law**

25 The law is clear that the United States has no obligation to disclose non-exculpatory
 26 grand jury transcripts of trial witnesses prior to trial.

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1 In any criminal prosecution brought by the United States, no
 2 statement or report in the possession of the United States which was
 3 made by a Government witness or prospective Government witness
 4 (other than the defendant) shall be the subject of subpoena,
 discovery, or inspection until said witness has testified on direct
 examination in the trial of the case.

5 18 U.S.C. § 3500(a)(*Jencks* Act). The Federal Rules of Criminal Procedure also explicitly
 6 exclude grand jury transcripts from discovery and pre-trial disclosure. Fed. R. Crim. P.
 7 16(a)(3)(“This rule [governing discovery] does not apply to the discovery or inspection of
 8 a grand jury's recorded proceedings, except as provided in Rules 6, 12(h), 16(a)(1), and
 9 26.2.”); Fed. R. Crim. P. 26.2(a) (“*After a witness other than the defendant has testified*
 10 *on direct examination*, the court, on motion of a party who did not call the witness, must
 11 order an attorney for the government or the defendant and the defendant's attorney to
 12 produce, for the examination and use of the moving party, any statement of the witness
 13 that is in their possession and that relates to the subject matter of the witness's
 14 testimony.”)(emphasis added).

15 The defendant is flatly incorrect in his assertion that the Jencks Act does not govern
 16 disclosure of grand jury transcripts. With all due respect for the Sixth Circuit, from which
 17 the defendant draws authority for his *Motion for Production*, the governing law for this
 18 Court should be from the United States Supreme Court and Ninth Circuit Court of
 19 Appeals. Those Courts have consistently held that “defendants are not entitled to grand
 20 jury transcripts before trial; due to the strictly enforced tradition of grand jury secrecy,
 21 defendants generally have access to no information whatsoever regarding the conduct of
 22 the grand jury.” *United States v. Mechanik*, 475 U.S. 66, 80-81 (1986) (upholding the
 23 denial of defendant’s request for grand jury transcripts); *United States v. Calderon-Perez*,
 24 255 Fed. Appx. 271, *1 (unpublished)(affirming that the defendant’s claim that
 25 Government was obligated to provide grand jury transcripts prior to a witness testifying at
 26 trial is not supported by the Jencks Act or the Rules of Criminal Procedure); *United States*
 27 *v. Isgro*, 974 F.2d 1091, 1095 (9th Cir. 1992) (finding that while trial testimony is not
 28

1 included in the Jencks Act disclosure provisions, grand jury transcripts are included);
 2 *United States v. Chaudry*, No. 03-40210 SBA, 2008 WL 2128197 (N.D.C.A. May 20,
 3 2008)(relying on the Jencks Act, denying defendant's motion for early disclosure of grand
 4 jury transcripts prior to trial). The defendant has not identified a single reason why this
 5 Court should depart from established and long-standing precedent and order disclosure
 6 that is not required by law.

7 2. The Defendant Has Not Made A Particularized Showing of Need

8 The United States recognizes that, in certain limited circumstances, this Court
 9 would have discretion to order disclosure under the Federal Rule of Criminal Procedure
 10 Rule 6(a)(3)(E).

11 The court may authorize disclosure—at a time, in a manner, and
 12 subject to any other conditions that it directs—of a grand-jury matter:

13 (i) preliminarily to or in connection with a judicial proceeding;

14 (ii) at the request of a defendant who shows that a ground may exist
 15 to dismiss the indictment because of a matter that occurred before
 the grand jury

16 However, to be entitled to such disclosure, the defendant must make a showing of
 17 particularized need that would outweigh the policy of protecting the secrecy of the grand
 18 jury. *United States v. Walczak*, 783 F.2d 852 (9th Cir. 1986) (citing *Pittsburgh Plate Glass*
 19 *Co. v. United States*, 360 U.S. 395, 400, 79 S. Ct. 1237, 1241, 3 L. Ed.2d 1323 (1959))
 20 (disclosure of grand jury transcripts would only be appropriate in certain cases with a
 21 particularized showing). The Supreme Court has recognized that even when the
 22 defendant does state a particularized need, these requests “are rarely granted ... the only
 23 access to grand jury materials is likely to be through the medium of the Jencks Act, which
 24 requires the prosecutor, after direct examination of a Government witness, to produce the
 25 witness' prior statements.” *Mechanik*, 475 U.S. at 80-81.

26 18 U.S.C. § 3500.

27 In this case, the defendant has not stated any particularized need that would
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1 outweigh the policy of protecting the secrecy of the grand jury. The defendant claims that
 2 he needs early disclosure of these transcripts for the following reasons:

- 3 1) to prepare his cross-examination and prepare for impeachment of the victim-
 4 witness;
- 5 2) to “demonstrate the prejudice of omitting V.S.’s background to the Grand Jury;”
- 6 3) because there are inconsistencies in the victim-witness’ statements that are not
 7 under oath;
- 8 4) the need for disclosure now, as trial approaches, outweighs the need for secrecy.

9 *Defendant’s Motion*, pp. 4-5. (*ECF Docket No. 92*). Two of the stated reasons - the need
 10 to to prepare his cross-examination and prepare for impeachment of the victim-witness
 11 and that the need for disclosure now, as trial approaches, outweighs the need for secrecy -
 12 is no different here than it would be in any other case. To find that defendant has made a
 13 particularized showing on these grounds would be tantamount to an acknowledgment that
 14 every defendant can make a particularized need for disclosure of grand jury transcripts as
 15 he or she approaches a trial date. The defendant also claims that disclosure of the transcript
 16 is necessary because of inconsistencies in the victim witnesses prior statements that were
 17 not made under oath.¹ In effect, this asserted reason is a restatement of the need to prepare
 18 for cross-examination and impeachment. For the reasons stated above, this general need
 19 should not be the basis for this Court to order disclosure. Finally, the defendant now, for
 20 the first time, alludes to improprieties in the Grand Jury, specifically the failure to present
 21 exculpatory evidence to the Grand Jury. This allegation is not only unfounded but
 22 irrelevant. If truly exculpatory evidence did exist - and the United States does not concede
 23 that the allegations by the defendant are either true or exculpatory - the United States had
 24 no affirmative obligation to present exculpatory evidence to the Grand Jury. *Isgro*, 974
 25 F.2d at 1096. The defendant’s generalized statements of need , taken individually and as a

27 ¹ The United States disagrees with the defendant’s characterization of the victim witness’
 28 statements.

1 whole do not meet the requisite showing of particularized need for this Court to consider
2 granting early disclosure of the grand jury testimony of the victim witness.

3 **C. Conclusion**

4 For all these reasons, the United States submits that this Court should deny the
5 defendant's *Motion For Production of Grand Jury Transcripts*.

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8 Date: August 20, 2008

Respectfully submitted,

9 JOSEPH P. RUSSONIELLO
10 United States Attorney

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12 /s/
DENISE MARIE BARTON
13 Assistant United States Attorney
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